IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Public Interest Litigation No. 71 of 2007

Sayyed Asif Ali Noor Ali
Age 51, Indian Inhabitant
Chairman of Defence of India
Muslim Organisation, having
its office at 50, Mangalwar Yard
Pawar Galli, Malegaon,
Nasik 428 203 ..Petitioner

vs.

1. The State Election Commission
having its office at New
Administrative Building,
Opp: Mantralaya, Madam Cama
Road, Mumbai 400 032

1A. Malegaon Municipal Corporation
Malegaon, Dist. Nasik.

2. The state of Maharashtra
through its Secretary, Urban
Development Department
Mantralaya, Mumbai 400 032

3. Union of Inmdia through the
Department of Home Minister

4. The Election Commission of
India, New Delhi ..Respondents

Mr.Girish Kulkarni i/b Mrs.Swati Deshpande for petitioners.
None for respondents.

Judgment Reserved on: 20.6.2007
Judgment Delivered on:19.7.2007

CORAM: SWATANTER KUMAR C.J.
AND
S.C.DHARMADHIKARI J.
19th July, 2007

ORAL ORDER:(Per S.C.DHARMADHIKARI J.)

1. The petitioner is a citizen of India and residing at Malegaon, District Nashik. He claims to be a social worker taking up various issues in the interest of society at large with the appropriate authorities.

2. In this petition under Article 226 of the Constitution of India, the challenge by the petitioner is to the decision of respondent nos. 1 and 2 whereunder the persons having more than two children are disqualified and ineligible to contest the election to the Local Bodies within the State of Maharasthra.

3. The State Election Commission on 12th July, 2001 issued a circular bringing to the notice of all concerned that the assent of the Governor of the State has been obtained to Maharashtra Municipal Corporation and Nagar Parishad, Nagar Panchayat and Industrial Township (2nd amendment) Act, 1995 so also to the amendment in Bombay Village Panchayat Act and Maharashtra Zilla Parishad and

Panchayat Samitis (Amendment) Act, 1995. In the light of the same, the amendment has come into force and as on the date of the amended provisions i.e. from 13th September, 2000 any person/candidate having two issues and the same are surviving, then, he shall not be eligible to contest the election to the above bodies. However, if between 13th September, 2000 till 12th September, 2001 i.e. within a period of one year, if one or more issues are delivered in a single pregnancy, then, this would not be taken into consideration for the purpose of above disqualification.

4. We are not concerned with the further clarification because the only submission that has been made before us by Mr.Kulkarni appearing for the petitioner is that no such condition or eligibility criteria is prescribed for the elections to the Maharashtra Legislative Assembly or Parliamentary Elections. Therefore, prescribing such qualification only for the election to local bodies is per se Arbitrary and Discriminatory. The Circular and amendment violates the mandate of Article 14 of the Constitution of India.

5. The controversy raised in this petition is no longer Res Integra. In Javed and others Vs. State of Haryana

and others reported in A.I.R.2003 Supreme Court 3057 identical challenge was raised to the provisions of similar nature to be found in Haryana Panchayati Raj Act (Act 11 of 1994). While rejecting the challenge this is what is observed by the Hon'ble Supreme Court:

> "12. It was submitted that though the State of Haryana has introduced such a provision of disqualification by reference to elective offices in panchayats, a similar provision is not found to have been enacted for disqualifying aspirants or holders of elective or public offices in other institutions of local self-governance and also not in State Legislatures and Parliament. So also all the states, i.e. other than Haryana have not enacted similar laws and, therefore, it appears that people aspiring to participate in Panchayati Raj governance in the state of Haryana have been singled out and meted out hostile discrimination. The submission has been stated only to be rejected. Under the constitutional scheme there is a well defined distribution of legislative powers contained in Part XI of the Constitution. The Parliament and every State Legislature has power to make laws with respect to any of the matters which

fall within its field of legislation under Article 246 read with Seventh Schedule of the Constitution. A legislation by one of the States cannot be held to be discriminatory or suffering from the vice of hostile discrimination as against its citizens simply because the Parliament or the Legislatures of other States have not chosen to enact similar laws. Such a submission if accepted would be violative of the autonomy given to the Centre and the States within their respective fields under the Constitutional scheme.

13. Similarly, legislations referable to different organs of local self-government, that is, Panchayats, Municipalities and so on may be, rather are, different. Many a time they are referable to different entries of Lists I, II and III of the Seventh Schedule. All such laws need not necessarily be identical. So is the case with the laws governing legislators and parliamentarians.

14. It is not permissible to compare a piece of legislation enacted by a State in exercise of its own legislative power with the provisions of another law, though pari materia it may be, but

enacted by Parliament or by another State legislature with its own power to legislate. The sources of power are different and so do differ those who exercise the power. The Constitution Bench in the State of Madhya Pradesh Vs.G.C.Mandawar, (1995)2 SCR 225, held that the power of the Court to declare a law void under Article 13 has to be exercised with reference to the specific legislation which is impugned. Two laws enacted by two different Governments and by two different legislatures can be read neither in conjunction nor by comparison for the purpose of finding out if they are discriminatory. Article 14 does not authorize the striking down of a law of one State of the ground that in contrast with a law of another State on the same subject, its provisions are discriminatory. When the sources of authority for the two statutes are different, Article 14 can have no application. So is the view taken in The Bar Council of Uttar Pradesh V. The State of U.P. and another (1973) 1 SCC 261; State of Tamil Nadu and others v. Ananthi Ammal and others, (1995) 1 SCC 519 and Prabhakaran Nair and others vs. State of Tamil Nadu and others, (1987) 4 SCC 238."

In our view, in the light of the above observations and further clarification issued by the Hon'ble Supreme Court in the decision reported in A.I.R.2004 S.C.5100 (Zile Singh Vs. State of Haryana and others) the challenge raised before us cannot be sustained.

6. No other ground is pressed nor the provisions/circulars challenged by raising other contentions. The only contention raised being unsustainable in the light of pronouncement of the Hon'ble Supreme Court, the writ petition fails and is dismissed summarily.

(CHIEF JUSTICE)

(S.C.DHARMADHIKARI J.)

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